

Bureau of Workers' & Unemployment Compensation

Funds Administration Overview

April 2002



*Serving Michigan...
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**Department of
Consumer & Industry Services**

John Engler, Governor
State of Michigan

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Department of Consumer & Industry Services

Jack F. Wheatley, Director
Bureau of Workers' & Unemployment Compensation

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Bureau of Workers' & Unemployment Compensation, Funds Administration

Funds Administration

Second Injury Fund
Silicosis, Dust Disease & Logging Industry Compensation Fund
Self-Insurers' Security Fund

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Executive Summary

Governor Engler issued Executive Order No. 2002-1 on February 7, 2002, which became effective April 8, 2002. The order combined the Bureau of Workers' Disability Compensation, the Unemployment Agency, the Workers' Compensation Board of Magistrates, and the Wage and Hour Division of the Bureau of Safety & Regulation into a new bureau which is referred to as the Bureau of Workers' & Unemployment Compensation. Jack Wheatley has been appointed director of the new Bureau. Jack has previously served as the Director of the Bureau of Workers' Disability Compensation, and most recently the Unemployment Agency.

The Funds Administration, having been a part of the Bureau of Workers' Disability Compensation, is now part of the new Bureau of Workers' & Unemployment Compensation. Our division consists of the Second Injury Fund, the Silicosis, Dust Disease and Logging Industry Compensation Fund, and the Self-Insurers' Security Fund. The Funds Administration is managed by a board of 3 trustees. Two trustees are appointed by the governor with the advice and consent of the senate. One represents employers authorized to act as self-insurers in Michigan, and that representation comes from Libby Child, Manager of Integrated Disability Management at Steelcase, Inc. The other trustee represents the insurance industry in the state. Richard Zapala represents those insurers and is the Assistant General Counsel at the Accident Fund Company. The third trustee is the Director of the Bureau of Workers' & Unemployment Compensation, Jack Wheatley.

Legal advice, as well as individual case representation, is secured from the Workers' Compensation Division of the Department of the Attorney General. In addition to the Assistant Attorney General in Charge, Ray Cardew, there are four Assistant Attorneys General and 38 Special Assistant Attorneys General who handle the trial and appellate work for the Funds Administration.

All money used to operate the Second Injury Fund, Silicosis, Dust Disease and the Logging Industry Compensation Fund, and the Self-Insurers' Security Fund comes from assessments against insurance companies and employers that self-insure. The method of assessing has changed with Enrolled Senate Bill No. 718, signed into law by Governor Engler with an effective date of January 1, 2002. Self-insured employers will be assessed based on paid losses as they have in the past. Insurance companies will now pay their share of the total assessments based on direct premiums written. Each of the three funds make a separate assessment. The Second Injury Fund and Silicosis, Dust Disease and Logging Industry Compensation Fund assessments are paid by insurance companies and self-insured employers. The Self-Insurers' Security Fund assessments are made only against private self-insured employers.

Executive Summary

The Second Injury Fund and Silicosis, Dust Disease and Logging Industry Compensation Fund assessments are based on a statutory formula and will generate revenues of approximately \$10,100,000 and \$2,100,000, respectively. Assessments for these two funds have not been this low for the past twenty years.

For the Self-Insurers' Security Fund, the trustees approved a 2002 assessment percentage of .01198 which will generate approximately \$4,300,000 in revenue. This is the largest assessment percentage for this fund since 1981. In fact, six times during the last twenty years, there was no Self-Insurers' Security Fund assessment. The Self-Insurers' Security Fund has assumed claims from four additional former self-insured employers now in bankruptcy since the beginning of last year. For more details about this new assessment process, please contact Rick Smith or Ardith Gloden at the Funds Administration office. You will find their direct telephone numbers on page 6 of the overview.

The Medical Benefit Reimbursement Provision [MCL 418.862(2)] is also administered by the Funds Administration. The funds for this provision, however, come through the State of Michigan General Fund.

Craig Petersen, former Director of the Bureau of Workers' Disability Compensation, established a committee in the spring of 2001 to review, evaluate, and make recommendations regarding two provisions within the Second Injury Fund, the permanent and total disability provision and the dual employment provision. A comprehensive report was written and presented to the director in December 2001. This report is available on the Bureau's web site at <http://www.cis.state.mi.us/wkrcomp/bwdc/home.htm>.

I hope you find this overview informative, and if you have any questions please call one of the administrators listed on the following page.

Dennis S. Morrill

Funds Administration Staff

<u>Dennis S. Morrill</u>	<u>Funds Administrator</u>	<u>(517) 241-8929</u>
Allison Kelly	Executive Secretary	(517) 241-8928
Richard Smith	Administrative Assistant	(517) 241-8920
Ardith Gloden	Assessment Collections	(517) 241-8925

<u>Sharon D. Baisden</u>	<u>Assistant Funds Administrator</u>	<u>(517) 241-8950</u>
Ray Dwyer	Program Specialist	(517) 241-8947
Ellen Feldpausch	Program Specialist	(517) 241-8945

Handles:

- ❖ Total and Permanent Disability Provision of the Second Injury Fund - Sections 351, 361 (3), 521
- ❖ Two Years of Continuous Disability Provision of the Second Injury Fund - Section 356(1)
- ❖ 70% Reimbursement Provision of the Second Injury Fund - Section 862(1)
- ❖ Dual Employment Provision of the Second Injury Fund - Section 372
- ❖ Medical Benefit Reimbursement - Section 862(2)

<u>Janice Remer</u>	<u>Assistant Funds Administrator</u>	<u>(517) 241-8940</u>
Brian Banfield	Program Specialist	(517) 241-8942
Robert Mills	Program Specialist	(517) 241-8944
Cheryl Moyer	Senior Claims Examiner	(517) 241-8935

Handles:

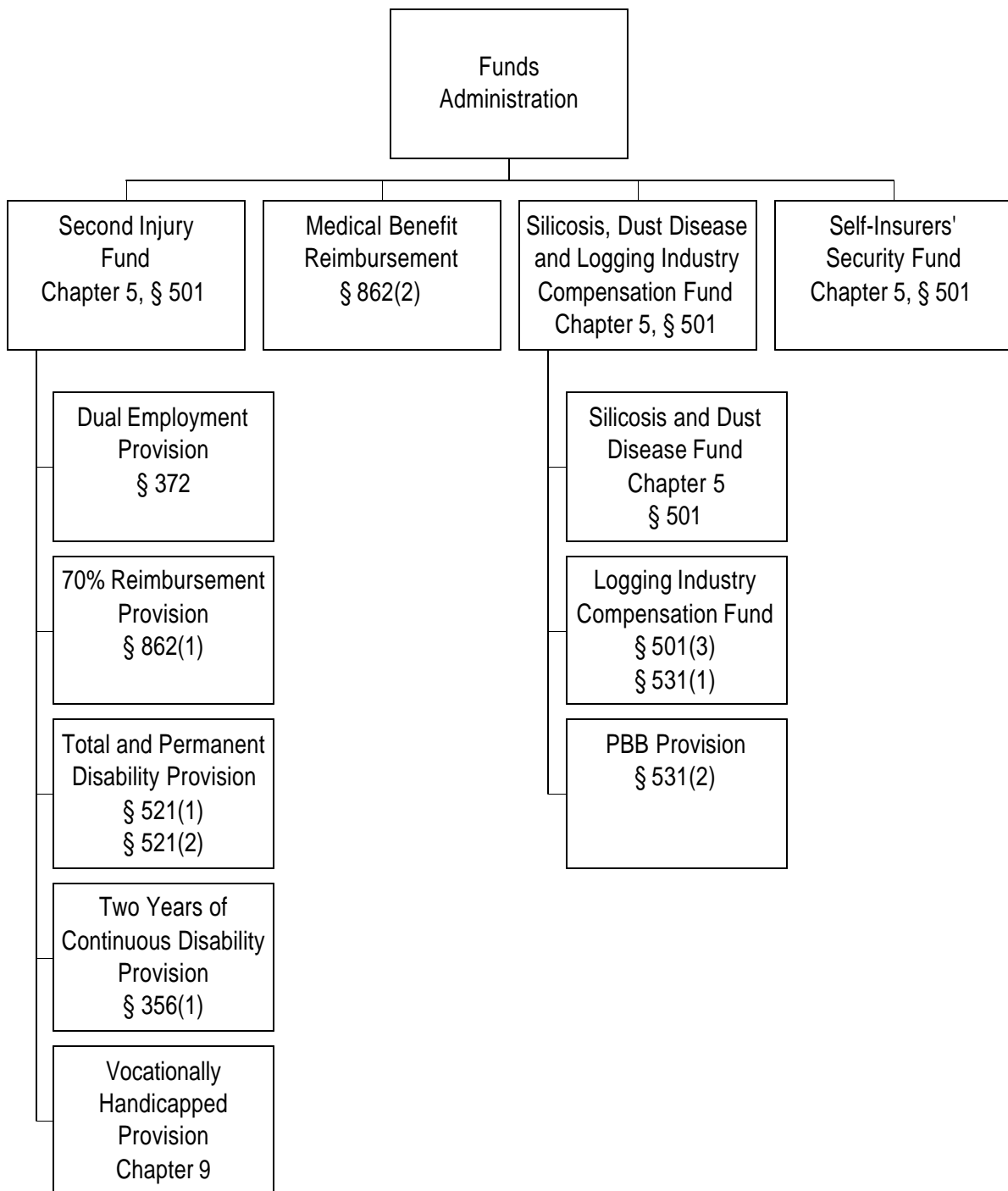
- ❖ Dual Employment Provision of the Second Injury Fund - Section 372
- ❖ Silicosis, Dust Disease and Logging Industry Compensation Fund - Chapter 5

<u>Terry A. Torkko</u>	<u>Assistant Funds Administrator</u>	<u>(517) 241-8930</u>
George Chipman	Program Specialist	(517) 241-8931
James Messenger	Senior Claims Examiner	(517) 241-8948

Handles:

- ❖ Self-Insurers= Security Fund - Chapter 5
- ❖ Vocationally Handicapped Provision of the Second Injury Fund - Chapter 9

State Funds Handled by the Funds Administration



Second Injury Fund

The Second Injury Fund has five distinct responsibilities under the Workers= Disability Compensation Act:

- ❖ Total and Permanent Disability Provision
- ❖ Vocationally Handicapped Provision
- ❖ Dual Employment Provision
- ❖ Seventy Percent Reimbursement Provision
- ❖ Two Years of Continuous Disability Provision

Total and Permanent Disability Provision

Total and permanent disability benefits are provided to individuals who meet the definition of total and permanent disability under the terms of the Workers= Disability Compensation Act. Under section 361(3), total and permanent disability, compensation for which is provided in section 351 means:

- a) Total and permanent loss of sight of both eyes.
- b) Loss of both legs or both feet at or above the ankle.
- c) Loss of both arms or both hands at or above the wrist.
- d) Loss of any two of the members or faculties in the subdivisions (a), (b), or (c).
- e) Permanent and complete paralysis of both legs or both arms or of one leg and one arm.
- f) Incurable insanity or imbecility.
- g) Permanent and total loss of industrial use of both legs or both hands or both arms or one leg and one arm; for the purpose of this subdivision such permanency shall be determined not less than 30 days before the expiration of 500 weeks from the date of injury.

Sequential losses (also called 8A cases) - 521(1) - If there is a prior loss of a hand, arm, foot, leg or eye, followed by the compensable loss of one or more of the above, the fund assumes payment of the basic weekly benefit after the carrier has paid for the second specific loss.

Differential benefits - 521(2) - Benefits paid by the Second Injury Fund to a totally and permanently disabled employee. The differential benefit is the difference between the statutory weekly rate payable by the employer or insurance carrier for the date of injury and the weekly benefit rate now provided by the statute.

Statutory Benefit Levels:

- ❖ Eighty percent (80%) of employee's after-tax weekly wage - Section 351(1)
- ❖ Two-thirds (2/3) of the employee's average weekly wage - Section 351(3) (note: cannot exceed the 1981 maximum benefit level)
- ❖ Maximum - 90% of the state's average weekly wage - Section 355(1)
- ❖ Minimum - 25% of the state's average weekly wage - Section 356(3)
- ❖ Fifty percent (50%) of the state's average weekly wage - applicable in cases with dates of injury before 7/1/68 - Section 351(2)
- ❖ Two-thirds (2/3) of the state's average weekly wage, inclusive of the value of discontinued fringe benefits, applicable in cases with dates of injury after 12/31/81 - Section 371(2)

Factors needed to determine the Second Injury Fund total and permanent disability benefit rate and accrued compensation:

- ❖ Date of injury
- ❖ Average weekly wage
- ❖ Value of discontinued fringe benefits
- ❖ Dependents
- ❖ Income tax filing status
- ❖ Date of birth of employee and dependents
- ❖ Carrier's weekly benefit rates for the period of fund payment
- ❖ Date of total and permanent disability
- ❖ Date of first notice (for application of the two-year back rule in cases with dates of injury after 6/30/68)
- ❖ Supplemental benefit rate, period and amount paid in cases with dates of injury from 9/1/65 through 12/31/79

Total and permanent differential benefits may be paid directly to the employee by the fund if the carrier is either unable to pay, has no separate obligation to pay, or has redeemed liability. This provision of the fund pays and/or reimburses weekly differential benefits only. Reimbursements are made to the carrier every six months. Redemption by an employer or insurance carrier before an admission or adjudication of liability for permanent and total disability extinguishes an employee's claim for benefits from the Second Injury Fund. When an employee and the employer or insurance carrier redeem the employer's liability after all parties concede permanent and total disability or there is an adjudication of permanent and total disability, the employee's claim for benefits from the Second Injury Fund can continue. Once it is agreed or determined by final decision that an employee is permanently and totally disabled, redemption by the employer or insurance carrier will not affect the responsibility of the Second Injury Fund to pay benefits to the claimant. The fund will pay weekly benefits to the employee for as long as the employee is permanently and totally disabled as defined in the workers' compensation statute. The Second Injury Fund will consider redemption after all parties have conceded or there has been an adjudication regarding permanent and total disability. The fund may redeem in conjunction with, or separate from, the employer or insurance carrier.

Vocationally Handicapped Provision

This program encourages Michigan employers to hire individuals with medically identifiable impairments of the back or heart, or who are subject to epilepsy or diabetes when these impairments cause a substantial obstacle to employment. The Department of Career Development, Michigan Rehabilitation Services and the Second Injury Fund jointly administer this program.

In the event of a work-related injury, the Second Injury Fund will either reimburse or pay direct workers' compensation benefit obligations beyond 52 weeks after the date of injury when all provisions of Chapter 9 have been met. The Second Injury Fund is also responsible for vocational rehabilitation costs from the date of injury.

An employer or carrier must complete the certification process in order to receive the protection of Chapter 9. Employer certification is invalid if the person was employed with the same employer within 52 weeks of issuance of the certificate. A certification is invalid if the employer certification is not filed with the Michigan Rehabilitation Services within 60 days after the first day of employment, or before an injury for which benefits are payable under the Act. Very few employer certifications have resulted in claims against the fund.

A carrier must place the Second Injury Fund on notice not less than 90 nor more than 150 days before the expiration of 52 weeks from the date of injury when it is likely that compensation may be payable beyond a period of 52 weeks after the date of injury.

Dual Employment Provision

Section 371(2) provides that an injured employee engaged in more than one employment at the time of injury is entitled to weekly benefits based on all wages earned in **employments covered** by the Michigan Workers' Disability Compensation Act. Section 372 provides for proportionate reimbursement from the Second Injury Fund. This provision applies to dates of injury on or after January 1, 1982.

Examples of dual employment situations **not** covered:

- ❖ Federal employment (excluding military members of the Michigan National Guard).
- ❖ Sole proprietorships, self-employment, and independent contractors.
- ❖ Partnerships or corporations where the owner/employee or other family members have excluded themselves from workers' compensation coverage.
- ❖ Domestic workers.

The dual employment provision does not have reimbursement liability in the following situations:

- ❖ There is no wage loss from non-injury employer.
- ❖ The injured worker is not disabled from performing non-injury job.
- ❖ Both employers are agricultural.
- ❖ Earnings from non-injury employer were not reported to the Internal Revenue Service.
- ❖ Both jobs caused the disability.
- ❖ The injured worker is receiving benefits as a volunteer/on-call employee under section 161.
- ❖ The non-injury employment is not covered under the act.

In calculating the employee's benefit rate, the average weekly wage for each employer is calculated separately, in accordance with Section 371, and then combined. If the employment which caused the personal injury or death provides 80% or less of the employee's total average weekly wage, the fund will reimburse its apportionment share of the weekly rate based on the ratio of the employee's average weekly wage at the non-injury employer to the total average weekly wage. If the place of injury or death provided more than 80% of the total average wage, there will be no reimbursement from the fund. However, the employer is responsible for compensation based on the total average weekly wage.

This provision reimburses the carrier for weekly benefits. This provision does not reimburse uninsured employers and has no obligation to pay disabled employees directly. Reimbursement should be requested quarterly on the Form 112, Application for Reimbursement.

70% Reimbursement Provision

Defendants who appeal an open award by a workers' disability compensation magistrate must pay 70% of the awarded weekly compensation benefits while the case is on appeal. If the award of benefits is later rescinded or reduced by final determination, excess weekly benefit payments are reimbursable by the Second Injury Fund.

Seventy percent (70%) benefits are payable from the mailed date of the magistrate's decision. Weekly benefits should be paid in accordance with the act (i.e., apply age reductions, coordination, dependency changes, partial, etc.). When there is a final award, credit should be taken for 70% benefits paid against what is due by final order. If more money has been paid than owed, the excess is reimbursed by the fund. If less has been paid than owed, the balance is due with interest. Weekly benefits paid by one carrier must be taken as a credit if another carrier is responsible.

Two Years of Continuous Disability Provision

The statute provides that if a person is injured on or after January 1, 1982 and, at the time of personal injury, is entitled to a compensation rate less than 50% of the state average weekly wage, after two years of continuous disability, the employee may petition for an increase in the rate of compensation. The employee may present evidence, that by virtue of the employee's age, education, training, experience or other documented evidence, the employee's earnings would have been expected to increase. Factors which affect all employees in a similar manner, such as inflation, should not be considered when determining whether a disabled employee qualifies for a rate increase. A magistrate may order an adjustment of the compensation rate up to 50% of the state's average weekly wage for the year in which the employee's injury occurred. The amount of the adjustment to the compensation rate is reimbursable by the Second Injury Fund. Only one adjustment is made for an employee and the adjustment is made from the date the petition was filed. This provision does not apply to partially disabled workers.

Redemption by a carrier before an admission of or an adjudication regarding the employer's liability extinguishes both the employee's right to seek a rate increase under the two years of continuous disability provision and the employer's right to seek reimbursement from the fund. Once it is agreed or determined by final decision that an employee is entitled to a rate increase after two years of continuous disability, the carrier can redeem its liability independent of the second injury fund, however, the carrier must continue to pay the two years of continuous disability benefit to the employee and seek reimbursement from the fund. The fund can settle with an employee, independent of the carrier, while the two years of continuous disability case is in litigation or after an admission or adjudication of fund liability.

Silicosis, Dust Disease and Logging Industry Compensation Fund

The Silicosis, Dust Disease and Logging Industry Compensation Fund has three separate types of responsibilities:

- ❖ Silicosis and Dust Disease Fund
- ❖ Logging Industry Compensation Fund
- ❖ PBB Provision

For claims with dates of injury from May 1, 1966 through June 30, 1985, reimbursement occurs after the employee has been paid more than \$12,500 in weekly benefits. Claims with dates of injury on or after July 1, 1985, carriers will pay \$25,000 or 104 weeks of benefits, whichever is greater, before reimbursement is due. The fund reimburses benefits at the coordinated rate and the carrier must actually pay the threshold amount before being entitled to reimbursement.

The fund has no reimbursement liability to a carrier for overpayments that result from the carrier's failure to reduce the rate in accordance with the statute.

The fund does not reimburse medical, burial expense, rehabilitation costs, penalty or interest payments.

It is the employer that adds the Silicosis, Dust Disease and Logging Industry Compensation Fund to a litigated case. The employee cannot add the fund.

The fund has the right to reimbursement and credit from third party recoveries pursuant to MCLA 428.827. Carriers who obtain third party reimbursement, must repay those monies before reimbursement resumes from the fund. The carrier is expected to avail itself of its right to reimbursement and where it has failed to do so will be held accountable for monies it was entitled to recoup (*Nelligan v Gibson Insulation*).

Silicosis and Dust Disease Fund

The Dust Fund reimburses carriers who pay weekly workers' compensation benefits to individuals who are disabled or die from silicosis, asbestosis, or other dust diseases. Claims usually come from the foundry industry, dry grinding exposure and exposure to asbestos. If the disability or death is caused by cancer, the employer must prove a threat to industry (*Dvorak v Faulkner Construction*).

Liability may be apportioned between a reimbursable lung condition and other occupational conditions and/or non-occupational conditions. If the date of injury is after June 30, 1985, it involves a two-step process to compute the carrier's threshold when the case is apportioned between a reimbursable lung condition and other compensable causes. First, the threshold of 104 weeks or \$25,000 is determined using the reimbursable portion of the benefit rate. That amount is divided by the percentage to be reimbursed by the fund (*Abbey v CWC*).

Logging Industry Compensation Fund

The Logging Fund reimburses carriers who pay weekly workers' compensation benefits to individuals who sustained personal injury or death while being employed in the logging industry, specifically employment described in the workers' compensation and employer's liability insurance manual entitled, "logging or lumbering and driver's code no. 2702," in effect in 1980. The classification 2702 includes all aspects of the logging operation with the exception of clerical employees and outside sales. Sawmill operations are separately rated.

PBB Provision

This fund reimburses carriers who pay weekly benefits as a result of disability or death caused by, contributed to, or aggravated by exposure to polybrominated biphenyl (PBB) if exposure occurred before July 24, 1979, by an employer located in Michigan engaged in the manufacture of PBB.

Self-Insurers' Security Fund

The Self-Insurers' Security Fund provides workers' compensation benefits to employees of bankrupt self-insured employers who become insolvent after November 15, 1971. If a private self-insured employer becomes insolvent, payments are made from the Self-Insurers' Security Fund when three conditions are met:

- ❖ The private self-insured employer is insolvent.
- ❖ Employee requests payment of benefits from the Funds Administrator or files a petition with the Bureau of Workers' & Unemployment Compensation.
- ❖ The insolvent private self-insured employer is unable to continue payments.

The fund pays from the date all three conditions are met. No payments for benefits owed before that date are paid by the fund. The fund does not pay if the employer is uninsured. Public employers are not covered. In the event of a bankruptcy, the employee should also file a claim in bankruptcy court for any workers' compensation benefits the fund cannot pay.

The Self-Insurers' Security Fund, when triggered, may utilize financial guarantees posted with the bureau to pay claims (408.43q). In addition, both specific and aggregate excess liability insurance policies continue to have responsibility for payments when retention levels have been met (408.43k).

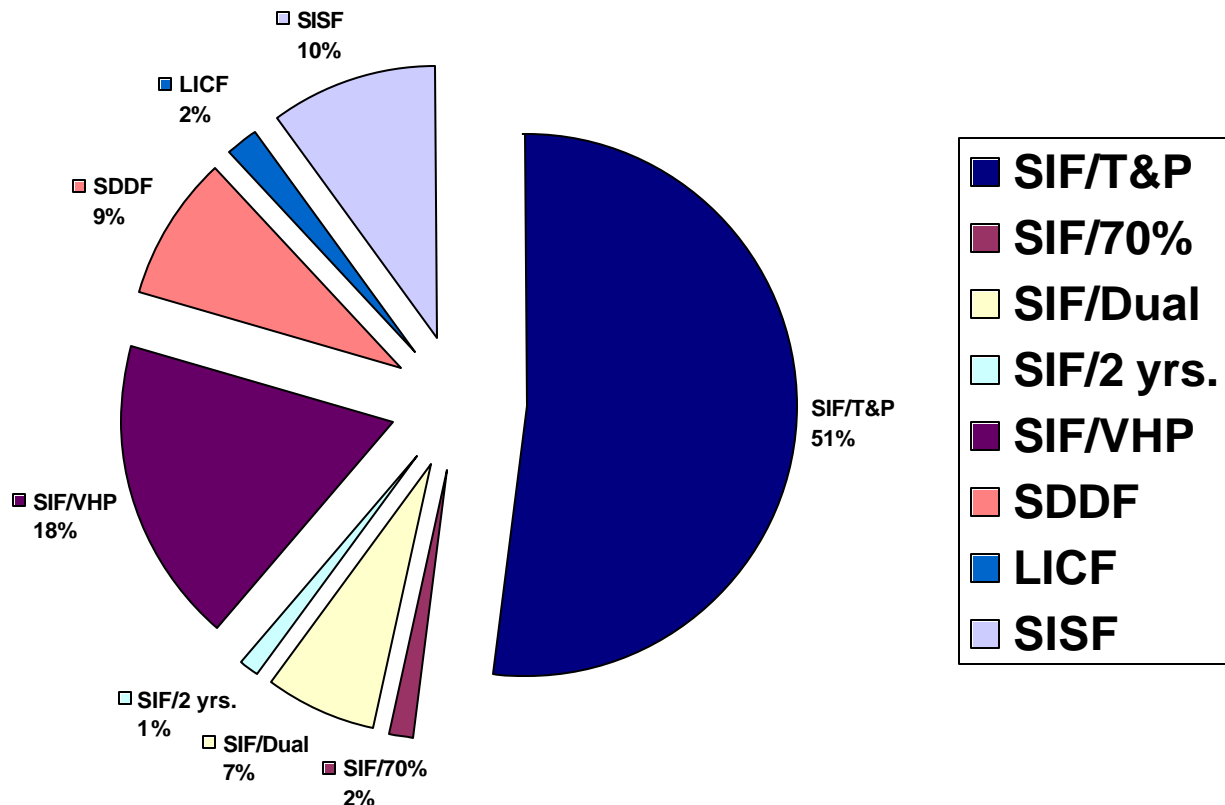
Medical Benefit Reimbursement

Reimbursement of medical benefits is a program administered within the Funds Administration. The objective of this program is to administer and provide reimbursement to the carrier or self-insurer for medical benefits paid to the claimant between the date of the magistrate's award and the date of the final determination of the appeal. If the final determination of the appeal has reversed the medical benefit awarded in the magistrate's decision, then reimbursement for payments would be processed and administered by the bureau and paid from the general fund of the state. Once the final appeal process has been completed, the bureau is required to provide a thorough review of any application for reimbursement submitted by the carrier or self-insurer. The staff must examine copies of the original medical bills and all final decisions (magistrate or appellate orders) to determine that reimbursement for medical costs is appropriate. After ensuring specific criteria and provisions of Section 862(2) and Rule 408.32a are met, then the reimbursement application is processed by the program staff and the department's finance division.

2001 Calendar Year Payments

Second Injury Fund		\$18,942,767.01
❖ Total & Permanent Disability Provision	\$12,383,146.80	
❖ Vocationally Handicapped Provision	\$4,379,525.78	
❖ Dual Employment Provision	\$1,592,761.90	
❖ 70% Reimbursement Provision	\$364,423.70	
❖ Two Years of Continuous Disability Provision	\$222,908.83	
Silicosis, Dust Disease and Logging Industry Compensation Fund		\$2,513,698.92
❖ Silicosis and Dust Disease Fund	\$2,064,457.22	
❖ Logging Industry Compensation Fund	\$449,241.70	
❖ PBB	\$0.00	
Self-Insurers' Security Fund		\$2,406,430.18
This represents all payments after reimbursements from the Second Injury Fund; the Silicosis, Dust Disease and Logging Industry Compensation Fund; the Compensation Supplement Fund; and excess carriers.		
Total of All Fund Payments		\$23,862,896.11

2001 Fund Provision Percentage of Payments

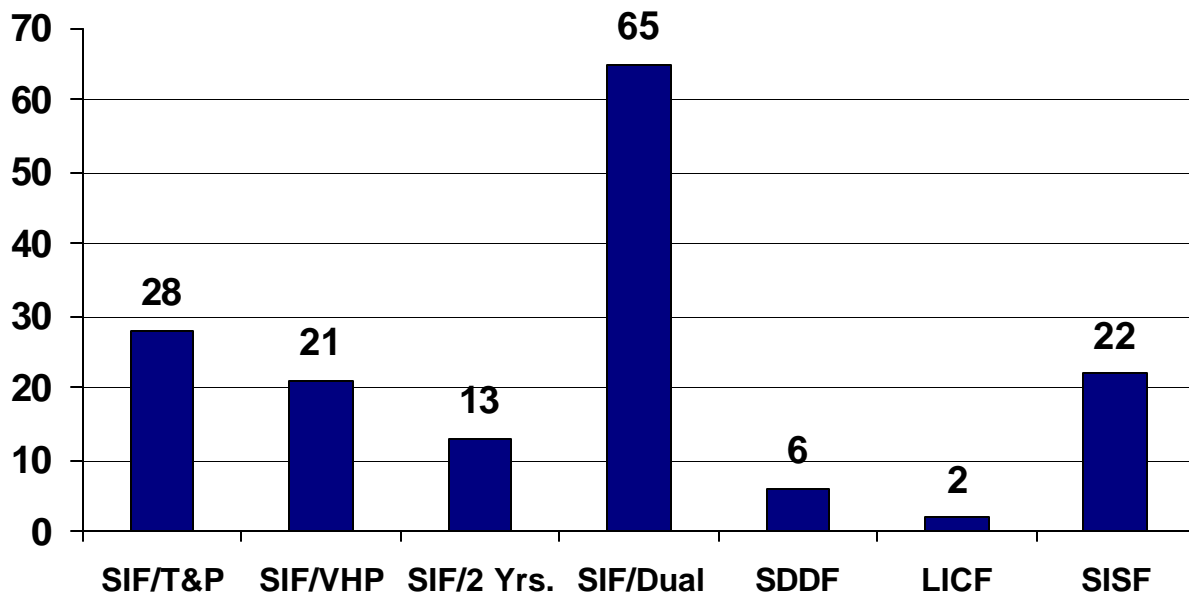


2001 Redemption Payments

(These payments are included in the calendar year payment summary)

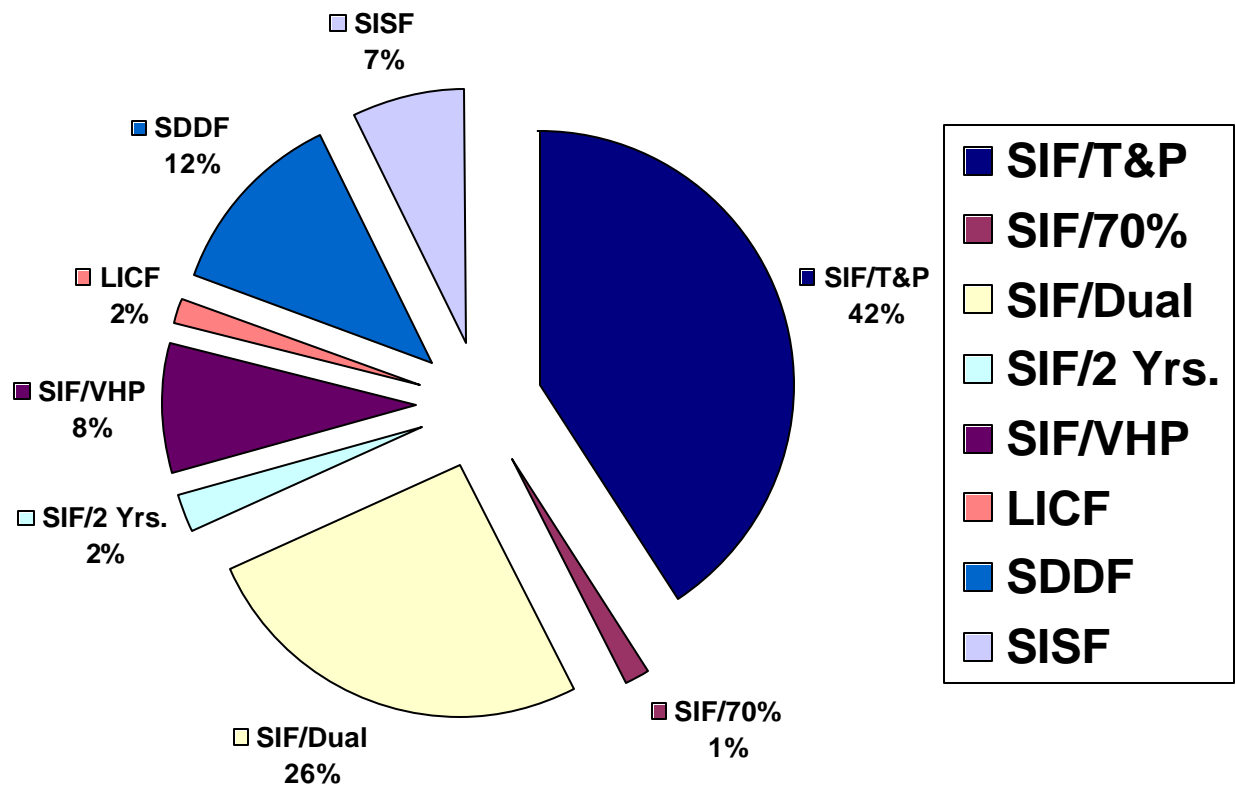
Fund	Claims Redeemed	Total Payments
<i>Second Injury Fund:</i>		
❖ Total & Permanent Disability Provision	28	\$502,100.00
❖ Vocationally Handicapped Provision	21	\$1,409,792.21
❖ Dual Employment Provision	65	\$603,535.68
❖ 70% Reimbursement Provision	0	\$0.00
❖ Two Years Continuous Disability Provision	13	\$152,400.00
Second Injury Fund Total:	127	\$2,667,827.89
<i>Silicosis, Dust Disease and Logging Industry Compensation Fund:</i>		
❖ Silicosis and Dust Disease Fund	6	\$48,500.00
❖ Logging Industry Compensation Fund	2	\$215,358.00
SDDF/LICF Total:	8	\$263,858.00
Self-Insurers' Security Fund Total:	22	\$1,034,882.18
All Fund Totals:	157	\$3,966,568.07

2001 Redemptions by Fund Provision



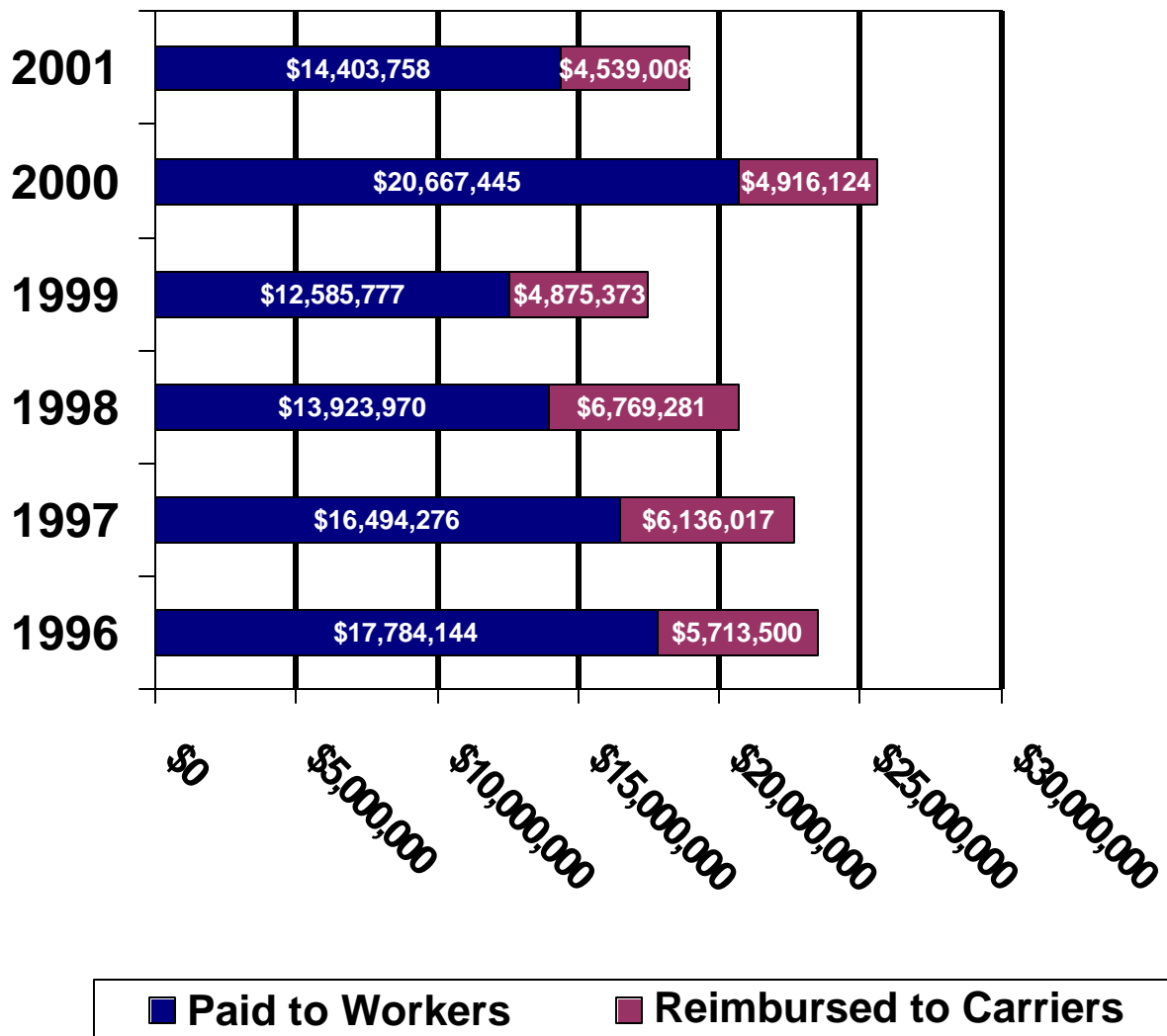
2001 Case Activity Total				
Fund/Provision	Payment/ Reimbursement	Non- Litigation	Litigation	Total
Second Injury Fund	1,957	415	1,119	3,491
❖ Total & Permanent Disability Provision	1,396	97	317	1,810
❖ Dual Employment Provision	282	252	608	1,142
❖ Two Years of Continuous Disability Provision	30	1	69	100
❖ Vocationally Handicapped Provision	224	31	118	373
❖ 70% Reimbursement Provision	25	34	7	66
Silicosis & Dust Disease Fund	367	20	153	540
Logging Industry Compensation Fund	36	13	22	71
Self-Insurers' Security Fund	208	31	85	324
Totals:	2,568	479	1,379	4,426

2001 Fund Provision Percentage of Total Cases

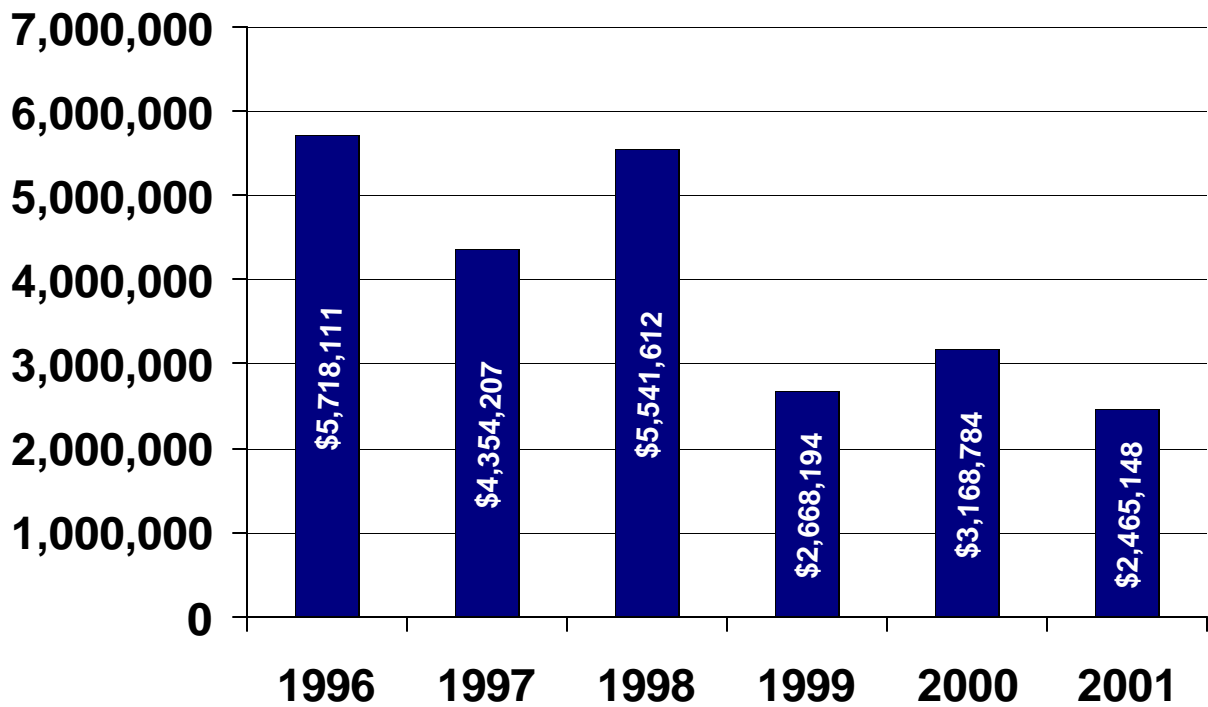


Vocationally Handicapped Provision of the Second Injury Fund 2001 Employer Certification	
Total Employer Certificates Issued Through 12/31/01	87,165
❖ Back	63,768
❖ Diabetes	7,329
❖ Epilepsy	8,873
❖ Heart	7,195

Benefits Paid Out by the Second Injury Fund



Benefits Reimbursed by the Silicosis, Dust Disease and Logging Industry Compensation Fund



Benefits Paid to Workers' by the Self-Insurers' Security Fund

